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18 UNITED STATES OF AMERICA

19 UNITED STATES DISTRICT COURT

20 FOR THE CENTRAL DISTRICT OF CALIFORNIA

21 UNITED STATES OF AMERICA,

22 No. CR 12-829-SVW-1

23 Plaintiff,

24 GOVERNMENT'S SENTENCING POSITION
REGARDING DEFENDANT ERNESTO DIAZ

25 v.

26 ERNESTO DIAZ,
27 Defendant.
28

Hearing Date: 11-15-2021
Hearing Time: 11:00 a.m.
Location: Courtroom of the
Hon. Stephen V.
Wilson

29 Plaintiff United States of America, by and through its counsel
30 of record, the Acting United States Attorney for the Central District
31 of California and Assistant United States Attorneys Alexander B.
32 Schwab, hereby files its sentencing position regarding defendant
33 Ernesto Diaz.

34 This sentencing position is based upon the attached memorandum
35 of points and authorities, the presentence investigation report

36 //

37 //

38

1 ("PSR"), the files and records in this case, and such further
2 evidence and argument as the Court may permit.

3 Dated: November 1, 2021

Respectfully submitted,

4 TRACY L. WILKISON
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6 SCOTT M. GARRINGER
7 Assistant United States Attorney
Chief, Criminal Division

8 /s/

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TABLE OF CONTENTS

	<u>DESCRIPTION</u>	<u>PAGE</u>
2	MEMORANDUM OF POINTS AND AUTHORITIES.....	1
3		
4	I. INTRODUCTION.....	1
5		
6	II. STATEMENT OF FACTS.....	2
7		
8	III. SENTENCING GUIDELINES.....	6
9		
10	IV. ARGUMENT.....	7
11		
12	A. The Egrediousness of Defendant's Fraud Offense Far Exceeds.....	7
13		
14	B. The Need for General Deterrence.....	9
15		
16	C. Defendant's Flight from Prosecution Further Demonstrates the Need for a Sentence Sufficient to Promote Respect for the Law and to Deter Similar Conduct.....	10
17		
18	V. RESTITUTION.....	11
19		
20	VI. CONCLUSION.....	12
21		

TABLE OF AUTHORITIES

<u>DESCRIPTION</u>	<u>PAGE</u>
Federal Cases	
<u>Paroline v. United States</u> , 572 U.S. 434 (2014)	12
<u>United States v. Edwards</u> , 595 F.3d 1004 (9th Cir. 2010)	10
<u>United States v. Martin</u> , 455 F.3d 1227 (11th Cir. 2006)	9
<u>United States v. Rosas</u> , 615 F.3d 1058 (9th Cir. 2010)	7
Federal Statutes	
18 U.S.C. § 3553	9
18 U.S.C. § 3146	6
18 U.S.C. § 3147	6
18 U.S.C. § 3663A	11
United States Sentencing Guidelines	
USSG § 2B1.1	6
USSG § 3C1.1	6, 9
USSG § 3C1.3	6
USSG § 3E1.1	7
Other Authorities	
S. Rep. No. 98-155 (1983)	9
Stephanos Bibas, <u>White-Collar Plea Bargaining and Sentencing After Booker</u> , 47 Wm. & Mary L. Rev. 721, 724 (2005)	9

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

3 From 2010 to 2011, defendant Ernesto Diaz was a key player in
4 "Crown Point Education, Inc.," a business that claimed it could save
5 distressed homeowners from foreclosure and eliminate their mortgage
6 balances. During his tenure at Crown Point, defendant delivered
7 seminars in which he marketed the program to prospective clients,
8 falsely touted its past success, and collected payments from the
9 homeowners. He later admitted during 2012 interviews with law
10 enforcement that, contrary to the representations he made during the
11 seminars, he believed in the soundness of the U.S. banking system and
12 was unaware of a single occasion where Crown Point had successfully
13 saved someone's home. In spite of all this, he continued to push the
14 Crown Point program on clients who spent what little savings they had
15 on the false promise that their homes could be saved.

16 In late 2012, defendant obtained counsel and entered a plea
17 agreement in which he agreed to cooperate against co-conspirators who
18 had worked with him at Crown Point, including Marcela Gonzalez, the
19 business's owner. After making his initial appearance, however, he
20 failed to appear for his change of plea, instead fleeing to Mexico.
21 Defendant was arrested seven years later, but rather than accept
22 responsibility for his crimes, defendant put the government to its
23 burden by proceeding to trial, though, in mitigation, he did enter a
24 guilty plea to his failure to appear charge on the morning of trial.

25 After years of dissembling and refusing to accept
26 responsibility, defendant now faces sentencing for his crimes. His
27 offenses, which victimized especially vulnerable people, require a
28 sentence sufficient to account for their seriousness and to deter

1 others tempted to follow a similar course of conduct. The Court has
2 significant discretion in selecting an appropriate sentence, but a
3 low-end sentence of 262 months' imprisonment, while substantial in
4 absolute terms, appropriately accounts for the various aggravating
5 factors in defendant's case.

6 **II. STATEMENT OF FACTS**

7 As the government established at trial, during the height of the
8 housing financial crisis, defendant falsely promised distressed
9 homeowners that Crown Point's program could save their homes from
10 foreclosure and eliminate their mortgages. All the clients had to do
11 was pay Crown Point approximately \$15,000 for the company's services,
12 with a partial payment demanded at the inception of the program. In
13 reality, defendant knew that the program had not worked and that
14 Crown Point clients had lost their homes to foreclosure and eviction,
15 including his own brother.

16 Defendant, an experienced real estate salesperson, joined Crown
17 Point in approximately March 2010, soon after it had been started by
18 codefendant Marcela Gonzalez. Defendant and Gonzalez gave seminars
19 pitching the Crown Point program to prospective customers. At the
20 seminars, defendant would both guarantee that the Crown Point program
21 would be successful and claim that it had, in fact, been successful
22 in clearing the mortgages of past customers. Defendant deliberately
23 kept the means by which the company purportedly eliminated existing
24 mortgages "secret" under the auspices of protecting proprietary
25 information. In addition to regularly giving large group seminars,
26 defendant met individually with customers and made similar
27 representations in those meetings. He also recruited and trained
28 salespeople to give the same pitch.

1 In reality, Crown Point had had no previous success in
2 eliminating customer mortgage debt at the time defendant made these
3 promises, nor were any of its further efforts fruitful. The Crown
4 Point program was largely predicated on mailing clients' mortgage
5 lenders certain documents demanding that the lenders "validate" the
6 borrowers' debt, or it would be eradicated. The mailings were
7 legally worthless, and defendant knew so. In some instances, lenders
8 responded, explaining that the mailings sent by Crown Point neither
9 precluded foreclosure nor eliminated mortgage balances, and noting
10 that the program appeared to be fraudulent. Notwithstanding these
11 obvious signs of the scheme's failure and fraudulent nature,
12 defendant continued to market the Crown Point program as a guaranteed
13 success.

14 However, to create the appearance of legitimacy for customers
15 (and to charge them extra fees), the documents mailed to lenders were
16 notarized, many of them with the stamp of Noemi Amaya, defendant's
17 sister. Defendant took her notary stamp from an office that the two
18 of them formerly shared and gave it to Crown Point employees to use
19 without her permission. Indeed, Ms. Amaya testified at trial that
20 she had never worked for or even heard of Crown Point and had left
21 her notary stamp behind in the office space she previously shared
22 with defendant.

23 As the fraudulent nature of the Crown Point program became more
24 abundant, defendant and his co-conspirators took measures to delay
25 foreclosure in order to maintain the illusion that the Crown Point
26 program was working. One such tactic involved using the bankruptcy
27 process to slow the eviction process by filing fraudulent bankruptcy
28 petitions in clients' names to trigger a stay of foreclosure

1 proceedings. In many instances, these petitions were filed in
2 clients' names without the knowledge or authorization of the
3 purported petitioners, including with forged signatures.

4 Another foreclosure delay tactic that defendant and his co-
5 conspirators used was clouding title. Specifically, defendant and
6 his co-conspirators would convey title to the clients' properties to
7 a sham third-party entity or added additional names to the title. In
8 some instances, clients were aware this was being done but were not
9 told the consequences; in many cases, clients were not aware that
10 this was being done at all. Neither title clouding nor the
11 fraudulent filing of bankruptcy petitions eliminated the underlying
12 mortgages of clients.

13 The entire time that defendant worked at Crown Point, numerous
14 customers complained to him or came looking for him because the
15 program was not working as promised. Indeed, defendant's brother,
16 Jesse Diaz, put his house through the Crown Point program, but had
17 his house foreclosed in May 2010 and was evicted a few months later.
18 By then, defendant stated in a later FBI interview, he knew for sure
19 that the Crown Point program did not work. Yet, defendant kept
20 working at Crown Point -- and marketing it as successful -- until at
21 least March 2011. Indeed, defendant was recorded giving a seminar in
22 November 2010, in which he claimed that Crown Point had been
23 successful in the past and omitted the fact that the program had not
24 worked for his own brother.¹

25 _____
26 ¹ At trial, defendant testified that this was the only seminar
27 he delivered after his brother lost his home and that he knew a
28 confidential informant was present. Not only are these claims
incredible on their face, but they contradict the testimony of former
Crown Point employees and clients who consistently stated that
defendant regularly delivered seminars.

1 After his interview with the FBI, defendant obtained counsel,
2 signed a cooperation plea agreement, and, on August 28, 2012, was
3 charged in an information with one count of mail fraud in connection
4 with his involvement in the Crown Point scheme. (Dkts. 1 & 5.) On
5 September 13, 2012, defendant had his initial appearance before this
6 Court and was ordered released on a \$10,000 unsecured appearance
7 bond, with travel restricted to the Central District of California
8 and an order to appear for all court appearances. (Dkt. 7, 10.) A
9 change of plea hearing was set for October 1, 2012, but defendant did
10 not appear. (Dkt. 16.) The change of plea hearing was continued to
11 October 15, 2012; again defendant did not appear. (Dkt. 17.)
12 Instead, defendant fled to Mexico, where he was a fugitive for seven
13 years until his arrest in the Central District on October 30, 2019.
14 (Dkt. 194.)

15 In February 2020, a second superseding indictment was returned
16 by a grand jury charging defendant with conspiracy to commit mail
17 fraud affecting a financial institution, four counts of mail fraud
18 affecting a financial institution, and failure to appear while
19 released on bond. (Dkt. 212.) On September 9, 2021, defendant
20 pleaded guilty to the failure to appear count and proceeded to trial
21 on the fraud charges. (Dkt. 262.) During a three-day trial, jurors
22 heard from various witnesses, including several clients of Crown
23 Point who all had personal dealings with defendant, including victims
24 C.T., G.T., T.S.J., and M.S.L.; former employees who spoke of
25 defendant's managerial role at Crown Point and the increasing client
26 complaints directed to defendant and Gonzalez; and FBI agents
27 involved in recording one of defendant's fraudulent seminars,
28 interviewing him in 2012, and tracking him down after his flight to

1 Mexico. On September 13, 2021, defendant was convicted on the
 2 conspiracy count, two counts of mail fraud affecting a financial
 3 institution, and one count of mail fraud. (Dkt. 270.) Defendant was
 4 acquitted of count five, which corresponded to victim S.L., who
 5 passed away before the start of trial.

6 **III. SENTENCING GUIDELINES**

7 As indicated in the government's objections to the PSR, the
 8 government submits that the following sentencing guidelines govern
 9 defendant's case:

10	Base Offense Level	USSG § 2B1.1(a) (1)	7
11	Loss > \$3.5m	USSG § 2B1.1(b) (1) (J)	+18
12	Sub. Loss > 5 victims	USSG § 2B1.1(b) (2) (B)	+4
13	Use of Authentication Feature	USSG § 2B1.1(b) (11) (A) (2)	+2
14	Bankruptcy/Educ. Misrep.	USSG § 2B1.1(b) (9) (B)	+2
15	Obstruction of Justice	USSG § 3C1.1	+2
16	Offense Committed on Release	USSG § 3C1.3	+3
17	TOTAL:		38

18 When combined with his Category II criminal history, defendant's
 19 guideline range is **262 to 327 months' imprisonment.**

20 On the morning of trial, defendant did enter a guilty plea to
 21 failure to appear while on pretrial release, in violation of 18
 22 U.S.C. §§ 3146 and 3147. While both those statutes prescribe
 23 penalties that run consecutive to any other sentence imposed, the
 24 sentencing guidelines effectively treat both as enhancements, with
 25 failure to appear triggering an obstruction of justice enhancement
 26 and § 3147 increasing defendant's offense level by three under USSG
 27 § 3C1.3. Ordinarily, defendant would be entitled to a two-level
 28 reduction for acceptance of responsibility for his guilty plea to the

1 failure to appear count. But because that count is grouped with
2 conduct for which he proceeded to trial and for which he is not
3 entitled to acceptance of responsibility, he does not receive the
4 benefit of § 3E1.1 in his overall guideline calculation. See United
5 States v. Rosas, 615 F.3d 1058, 1062 (9th Cir. 2010). That said,
6 defendant's acceptance of responsibility on this count of conviction
7 is a mitigating factor in defendant's favor and supports imposition
8 of a sentence at the low end of his guideline range.

9 **IV. ARGUMENT**

10 **A. The Seriousness of Defendant's Crime**

11 Defendant's fraud crime was more egregiousness than might be
12 suggested by just the dollar figures involved. Some of the witnesses
13 who testified at trial provide a snapshot of the type of victims
14 defendant targeted -- trusting, unsophisticated homeowners who, in
15 the midst of some of the darkest moments in their lives, turned to
16 Crown Point to save their homes from foreclosure and their families
17 from eviction. Victims G.T. and C.T. fell behind on their mortgage
18 payments after George suffered a nearly fatal workplace accident that
19 left him unable to walk and badly impaired his cognitive functioning.
20 Victim T.S.J. found herself unable to stay current on her home
21 payments after the nursing school she ran closed and she underwent
22 chemotherapy treatments for cancer. Victim M.S.L., like many of
23 Crown Point's clients, is a Spanish speaker who was asked to sign
24 documents available only in English. They are, of course, only a
25 sampling of the hundreds of clients defendant victimized.

26 Defendant not only bled these victims dry of what little savings
27 they had left, but also harmed them in ways not captured by the loss
28 figures. As detailed at trial, an integral part of the scheme

1 involved the filing of unauthorized bankruptcy petitions to delay the
2 foreclosure process, thereby leaving victims with the impression that
3 the Crown Point program was working and inducing them to continue
4 making payments, along with whatever lingering effects the bankruptcy
5 filings may have had on their credit ratings. Many, though not all,
6 of defendant's victims could have qualified for loan modifications or
7 legitimate foreclosure forbearance programs to save their homes but,
8 in reliance on defendant's lies, were never able to avail themselves
9 of these options. And, at the very least, victims could have used
10 the money they gave Crown Point to make a few additional mortgage
11 payments, allowing them to keep their homes a little longer and build
12 additional equity before foreclosure. It is impossible to quantify
13 these harms in dollars and cents, but they far outstrip the direct
14 losses attributable to defendant's scheme.

15 Also aggravating is defendant's theft of his sister's notary
16 stamp from the office space the two of them shared and which was then
17 used to provide a false imprimatur to the purported legal documents
18 victims signed. Such conduct, which blends both ordinary theft and
19 identity theft, puts the lie to defendant's claim that he believed
20 Crown Point was a legitimate business that only proved to be
21 unsuccessful late in his tenure.

22 Finally, defendant testified falsely at trial in his own
23 defense, claiming that he believed in the Crown Point process
24 notwithstanding the fact that (1) he admitted to investigators that
25 he did not doubt the validity of the banking system and was unaware
26 of a single instance in which Crown Point had been successful; and
27 (2) had signed, with the benefit of counsel, a plea agreement in
28 which he admitted his guilt. Ordinarily, such conduct would warrant

1 a two-level increase for obstruction of justice in defendant's
 2 offense level. See USSG § 3C1.1, comment. (n.4(B)). But because
 3 defendant pleaded guilty to failure to appear, he already receives
 4 this enhancement. See id. § 3C1.1, comment. (n.8). Under the
 5 circumstances, it is appropriate to consider defendant's false
 6 testimony under 18 U.S.C. § 3553(a) as evidence of the seriousness of
 7 his offense and danger to the community, since it demonstrates both
 8 his lack of remorse and his willingness to employ deceit to advance
 9 his goals even years after his original fraud crimes.

10 **B. The Need for General Deterrence**

11 Crimes like the ones defendant committed are quintessentially
 12 deterable. "Because economic and fraud-based crimes are 'more
 13 rational, cool, and calculated than sudden crimes of passion or
 14 opportunity,' these crimes are 'prime candidate[s] for general
 15 deterrence.'" See United States v. Martin, 455 F.3d 1227, 1240 (11th
 16 Cir. 2006) (quoting Stephanos Bibas, White-Collar Plea Bargaining and
 17 Sentencing After Booker, 47 Wm. & Mary L. Rev. 721, 724 (2005)). In
 18 fact, Congress, in drafting § 3553, confirmed that this common-sense
 19 principle was one of the driving forces for including deterrence
 20 among the goals of sentencing. See S. Rep. No. 98-255, at 76 (1983),
 21 reprinted in 1984 U.S.C.C.A.N. 3182, 3259 ("To deter others from
 22 committing the offense . . . is particularly important in the area of
 23 white collar crime."). Indeed, Congress was expressly concerned with
 24 the fact that "[m]ajor white collar criminals often are sentenced to
 25 . . . little or no imprisonment," which the offenders disregard as "a
 26 cost of doing business." Id. As the Ninth Circuit has explained,
 27 fraud "tends to be a planned, deliberate crime, which allows plenty
 28 of time for reflection, calculation of the odds of success or

1 failure, and the ultimate decision." United States v. Edwards, 595
2 F.3d 1004, 1021 (9th Cir. 2010).

3 Both the profitability of defendant's crimes and the difficulty
4 in exposing them support a substantial sentence to provide adequate
5 deterrence. Defendant's scheme was immensely profitable, with the
6 Crown Point program bilking its clients out of millions. The scam
7 also targeted the types of financially unsophisticated victims who
8 were least able to recognize it for the fraud that it was. Defendant
9 and his co-conspirators also cloaked Crown Point in a veneer of false
10 legitimacy, enabling him to avoid detection from existing customers
11 while enticing new clients to pay for Crown Point's "services"; the
12 official-looking office space, the reams of worthless documents
13 filled with impenetrable legalese, the use of a notary stamp
14 defendant stole from his sister -- all of these devices helped entice
15 new victims and made it more difficult for clients and outsiders to
16 detect the fraud that was occurring. In these circumstances, where
17 the profitability of the crime is high and its rate of detection low,
18 the need for deterrence is at its zenith.

19 **C. Defendant's Flight from Prosecution Further Demonstrates
20 the Need for a Sentence Sufficient to Promote Respect for
the Law and to Deter Similar Conduct**

21 Defendant's fraud crimes were callous, calculated, and
22 calamitous. On their own, they would merit a significant sentence of
23 imprisonment. But defendant took his crimes a step further: After
24 promising prosecutors he would cooperate against his co-conspirators
25 and promising the Court that he would appear as ordered, he instead
26 fled to Mexico, where he remained for approximately seven years
27 before his eventual arrest in October 2019.

1 A defendant's flight is an attack on the judicial process
2 itself. If successful, a fugitive will never pay the price for his
3 crimes and his victims will never receive restitution or any other
4 form of accountability. But even if a fugitive is eventually caught,
5 as defendant was, the flight from prosecution imposes serious costs.
6 Some witnesses' memories may have faded while others may become
7 unavailable. In this case, victim S.L, referenced in count five of
8 the second superseding indictment, passed away before trial, and it
9 is likely no coincidence that that is the count on which defendant
10 was acquitted. Fleeing from prosecution also generally increases the
11 costs on the government to achieve justice. Neither of the two
12 prosecutors at trial represented the government at the time defendant
13 was original charged and fled the country, and as the Court heard at
14 trial, of the two original case agents, one had retired from the FBI
15 while the other had long been reassigned out of state -- most
16 recently to Iowa. Given prosecutorial challenges like these, many
17 who flee will be better positioned to avoid conviction, and a more
18 severe sentence is necessary for future offenders to consider the
19 costs of fleeing prosecution to outweigh the benefits.

20 **V. RESTITUTION**

21 Restitution is required in this case pursuant to the Mandatory
22 Victims Restitution Act. 18 U.S.C. § 3663A(c)(1)(A)(v). While it
23 would be tempting to order restitution in this case based on the
24 payments victims made to Crown Point during the period that roughly
25 corresponds to his time working there, doing so would understate the
26 losses defendant caused. As client files presented at trial attest,
27 victims commonly made monthly payments to Crown Point, meaning that

1 many victims with whom defendant personally interacted continued
2 making payments even after defendant no longer worked at Crown Point.

3 The government acknowledges the difficulty in reaching an exact
4 restitution figure attributable to defendant's conduct in this case.
5 But, as the Supreme Court has cautioned, in awarding restitution, "a
6 court must assess as best it can from available evidence the
7 significance of the individual defendant's conduct in light of the
8 broader causal process that produced the victim's losses. This
9 cannot be a precise mathematical inquiry and involves the use of
10 discretion and sound judgment." Paroline v. United States, 572 U.S.
11 434, 459 (2014). The \$3,060,519 this Court ordered codefendant
12 Marcela Gonzalez to pay in restitution pursuant to the stipulation
13 between her counsel and the government provides an appropriate
14 starting point for the restitution figure in this case. (Dkt. 183.)
15 The Court should also order that defendant be made jointly and
16 severally liable for the restitution obligation along with
17 codefendants Gonzalez and Lopez.

18 The government will lodge separately under seal a copy of the
19 restitution list provided in connection with codefendant Gonzalez's
20 sentencing as well as provide a copy to the Probation Office.

21 **VI. CONCLUSION**

22 For the foregoing reasons, the government respectfully requests
23 that this Court impose a sentence of 262 months' imprisonment
24 (concurrent terms of 238 months' imprisonment on counts one through
25 four and a consecutive 24-month sentence on count six); concurrent
26 five-year terms of supervised release on counts one, two, and three,
27 and three-year terms of supervised release on counts four and six; a

1 \$500 special assessment; and full restitution, which the government
2 estimates at approximately \$3 million.

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